

## **PLANNED DEVELOPMENT PERMIT AMENDMENT**

<b>FILE NO.</b>	<b>PDA14-035-01</b>
<b>LOCATION OF PROPERTY</b>	<b>Generally located north of Adeline Avenue and Casselino Drive, north and east of Hillsdale Avenue and south of the Union Pacific right-of-way</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Mixed Use Neighborhood; Open Space, Parklands and Habitat; Industrial Park</b>
<b>PROPOSED USE</b>	<b>314 single-family detached and attached residences, public parks, open space and trails</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Communications Hill 2 Project Final Subsequent Environmental Impact Report for File No. PDC13-009 (Resolution 77172)</b>
<b>APPLICANT/ADDRESS</b>	<b>KB Home South Bay Inc (Peter Lezak), 5000 Executive Parkway Unit 125 San Ramon, CA 94583</b>
<b>OWNER/ADDRESS</b>	<b>MTA Properties LP (c/o Robert Bettencourt), PO Box 13105 Coyote, CA 95013</b>

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Site Description and Surrounding Uses.** The project site is generally located north of Adeline Avenue and Casselino Drive, north and east of Hillsdale Avenue and south of the Union Pacific right-of-way.
  - a. The project site is abutted to the north vacant land; abutted to the east by properties with industrial uses; abutted to the south by properties with industrial, multiple family, and mobile home park uses; and abutted to the west by vacant property and properties with single family and multiple family uses.
2. **Project Description.** Communications Hill II Project Master Planned Development Permit, File number PD14-035, approved street and lot layout, and set forth conditions for the development approved by Planned Development Zoning PDC13-009. This Planned Development Permit Amendment approves Phase I of the Communications Hill II project which consists of up to 314 single-family attached and detached residential units, parks, open space, and related public and private infrastructure.

3. **General Plan Conformance.** The Project is consistent with the General Plan in that:
  - a. This Planned Development Permit Amendment approves Phase I of the Communications Hill II project which consists of construction of up to 314 single-family attached and detached residential units, parks, open space, and related public and private infrastructure. This is the first phase of development as described in Planned Development Zoning File No. PDC13-009 that was found in conformance of the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designations of Mixed Use Neighborhood; Open Space, Parklands and Habitat; and Industrial Park.
  - b. The project allows for implementation of the Communications Hill Specific Plan.
4. **General Development Plan Compliance.** The Project is consistent with the regulations of the Planned Development Zoning for the site in the following manner:
  - a. The Project approves development that is consistent with the allowed uses, density, height and setbacks shown on the General Development Plan of the property.
  - b. Two covered parking spaces are provided per unit in conformance with the requirement of the General Development Plan.
  - c. Private open space is provided at a minimum of 70 square feet and a maximum of 421 square feet per unit for the attached and detached townhomes. This minimum is less than the Residential Design Guideline recommendation of 300 square feet per unit for "garden townhouses". Private open space for detached rowhomes is provided at a minimum of 400 square feet per unit, in conformance with the Residential Design Guideline recommendation of 400 square feet per unit for "rowhouses".

Common open space is provided at 243 square feet per unit, in excess of the Residential Design Guideline recommendation by approximately 90 square feet per unit. Further, this Project provides parks and trails in conformance with the Communications Hill Specific Plan. The Residential Design Guidelines allow a reduction in common open space where a project is in close proximity to a public park. Based on the provision of public parks, trails and common open space in excess of the Residential Design Guideline recommendation, the Director finds this project to be in conformance with the open space requirements due to overall open space provisions discussed above.
  - d. Landscaping consisting of shrubs and trees is proposed on the slope adjacent to Block 52 in order to minimize the visual impact of level rear yards.
5. **Environmental Review.** The environmental impacts of the project, including, but not limited to, noise, vibration, dust, drainage, erosion, stormwater runoff, and odor, which even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
  - a. An Environmental Impact Report, "Communications Hill 2 Project Final Subsequent Environmental Impact Report", was prepared for this project and certified on September 30, 2014, pursuant to the provisions of CEQA (Resolution No. 77172).
  - b. The project will have a significant effect on the environment regarding transportation, air quality, aesthetics, and population and housing.
  - c. Mitigation measures were made a condition of the approval of the project.
  - d. A Mitigation Monitoring and Reporting Program was adopted for this project.

- e. A Statement of Overriding Considerations was adopted for this project. The City Council determined that the project provides specific economic, legal, social, technological, and other benefits that outweigh the unavoidable impacts identified in the FEIR.
6. **Planned Development Permit Finding.** The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant or land owner fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant and land owner; and
  - b. Agreement by the applicant and land owner to be bound by, to comply with, and to do all things required of or by the applicant/land owner pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Planned Development Permit Amendment for Communications Hill Phase I" dated August 20, 2014, last revised on March 18, 2015 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Conformance to PD14-035.** Unless specifically modified with this permit, this project shall conform to all of the requirements of the master Planned Development Permit PD14-035
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
10. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
12. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, PDA14-035-01 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the applicant shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San Jose Common Interest Development standards.



- f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The project applicant shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
13. **Fire Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2013 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
14. **Green Building Requirements for Tier 2 Residential Development ( $\geq 10$  units).** This development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits for the construction of buildings approved through the scope of this permit, the applicant shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this permit. The project must receive the minimum green building certification of LEED Certified or GreenPoint Rated. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
15. **Recycling.** Scrap construction material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
16. **Solid Waste Management Plan.** Solid waste management shall conform to the Solid Waste Management Plan entitled "Communication Hill Town Home Development San Jose, CA", dated February 3, 2015, to the satisfaction of the Director of Environmental Services.
17. **Homeowner's Association(s).** A Homeowner's Association or Associations shall be established for maintenance of common areas. A copy of this Planned Development Permit Amendment, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association(s) by the applicant no later than 30 days upon completion of each phase.
18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, walls and fence surfaces within 48 hours of defacement, including job sites for projects under construction.
19. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly visible areas free of litter, trash, cigarette butts and garbage.
20. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.

21. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
22. **Building and Property Maintenance.** The property owner, HOA and/or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
23. **Fencing.** Fence height and materials for residential blocks shall be provided as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement. Fencing for private rear yards on Blocks 52 and 49 shall be open in nature above three feet in height as shown on the approved plans.
24. **Accessory Structures.** Accessory structures shall conform to the Planned Development Zoning PDC13-009 standards and require issuance of a Permit Adjustment.
25. **Additions.** A Planned Development Permit Amendment is required for any additions to a building subsequent to issuance of a Certificate of Occupancy.
26. **Street Side Elevations for Detached Units.** All single family detached units on corner lots shall have enhanced side elevations on the public street side. Lots 52, 53, 68, 69, 122, 123, 139, and 152 shall be "Alternate plans with wraparound porches" as shown on the approved plan set. Enhanced elevations may be substituted with "Alternate plans with wraparound porches" upon issuance of a Permit Adjustment.
27. **Tract Sales Office/Model Homes.** This permit includes the approval of a tract sales office/model homes complex as shown on the approved plans. Modification or relocation of the tract sales office/model home complexes shall be approved through a Permit Adjustment. Placement of any structure, fence or sign in the public right-of-way requires issuance of an Encroachment Permit from the Department of Public Works.
28. **Sign Approval.** No signs are approved at this time other than those shown as part of the Tract Sales Office. All other proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
29. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set.
  - a. *Landscaping maintenance:* Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner.
  - b. *Irrigation Standards.* Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines. The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
  - c. *Certification.* Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

- d. *Developer Installed Front Yard Landscaping Required.* Pursuant to the City's Residential Design Guidelines, the developer shall provide comprehensive front yard landscaping and irrigation for developments with small lot single-family detached homes. The developer shall ensure that said landscaped areas are maintained by a homeowners association or similar entity.
  - e. *Common Area Landscaping.* All landscaping in common areas that is not maintained by the CFD shall be maintained by the Homeowner's Association or other similar entity.
  - f. *Outdoor Lighting.* Outdoor lighting is approved with this permit as shown on the approved plans. The Correlated Color Temperature (CCT) shall fall within the range of 3500-4300K, and light level must be reduced for a minimum of 6 hours with a 50% light level reduction, beginning no later than 12 AM. Lighting fixture types and placement may be modified with a Permit Adjustment at the discretion of the Director of Planning, Building and Code Enforcement.
  - g. *Tree Removal Mitigation.* Master PD Permit PD14-035 was approved with a condition requiring tree removal mitigation that consists of planting of 132 24" box trees and 17 18 gallon trees. The approved landscape plan for this permit includes planting of approximately 600 trees, which fulfills the tree removal mitigation requirement. No further mitigation tree planting is required for any future phases.
30. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
31. **Stormwater Runoff Treatment Measures – Maintenance and Records.** The developer shall comply with the following:
- a. All stormwater runoff treatment measures installed on property shall be permanently maintained by the property owner in good repair and free of litter and debris, obstructions, and stored materials.
  - b. All owners of property on which a stormwater treatment measure has been installed pursuant to the requirements of this chapter shall retain, and make available for inspection and copying, all records of inspection and maintenance activities performed on the installed stormwater treatment measure within the five years immediately preceding the demand for such records by any representative of the City.
  - c. It shall be unlawful for any person to alter, remove fail to maintain, or to cause, allow or permit alteration, removal or failure to maintain a stormwater treatment measure that has been installed pursuant to the requirements of this chapter, except pursuant to an adjustment to the development permit for the project if the development permit required installation of the stormwater treatment measure, or pursuant to an administrative permit issued for the removal or alteration of the stormwater treatment measure, if the measure was not installed pursuant to a development permit. The criteria for granting an adjustment or administrative permit shall be that an alternate means of providing equivalent stormwater treatment will be provided.

- 32. Post-Construction Stormwater Runoff Treatment Measures - Maintenance and Records.** All post-construction treatment measures must be installed as specified on approved construction plans. Treatment measures shall not be altered or removed, and must be operated and maintained by qualified personnel consistent with approved development plans and/or supplemental operation and maintenance plans. Property owner must ensure that treatment measures continue to operate effectively for the life of the project. Property owners and/or property managers designated by the owner must keep a maintenance schedule and record of all treatment measures maintenance activities. Copies of maintenance schedules and records will be retained and made available for inspection upon request by the City. When used, all proprietary treatment measures must be operated and maintained per the manufacturers' specifications. The City may require additional maintenance beyond the manufacturers' specifications, if needed.
- 33. Stormwater Management – Construction Activities.** The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the *CASQA Stormwater BMP Construction Handbook Portal* (July 2012). Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 East Santa Clara Street, San José, California 95113. The Erosion Control Plan may include BMPs as specified in the *CASQA Stormwater BMP Construction Handbook Portal* (July 2012) for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works.
- 34. Stormwater Stenciling.** All storm drain inlets and catch basins shall be labeled with the "NO DUMPING - FLOWS TO NEIGHBORHOOD CREEK" stencil. The "No Dumping" message should be applied to both the top of the curb and the face of the curb next to the storm drain inlet, preferably on the left side. If this is not feasible, place the message in the street in front of the inlet. The stencils may be obtained, at no charge, through the Environmental Service Department. Contact Suzanne Thomas at (408) 945-3000.
- 35. Conformance with Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program, as adopted by City Council Resolution 77172 on September 30, 2014.
- 36. Hillsdale Staircase.** The proposed staircase from Hillsdale Avenue to Communications Hill Boulevard will be constructed as part of the subject project and will be a Park facility. Design is subject to the public park design process as outlined in the Parkland Agreement. Construction shall be completed no later than 18 months after approval of the staircase construction plans by the Department of Parks, Recreation and Neighborhood Services. This date may be extended by a Planned Development Permit Amendment to the satisfaction of the Directors of Planning, Building and Code Enforcement and Director of Parks, Recreation and Neighborhood Services.
- 37. Construction Notification:** Prior issuance of a grading permit, the applicant shall provide written notification to all residential units within 500 feet of the area of ground disturbance to provide information on construction activities to the satisfaction of the Director of Planning, Building and Code Enforcement. The notification shall include information regarding construction hour limitations, proposed construction activities, construction traffic routes and contact information for the disturbance coordinator.



**38. Construction Noise Impacts (MM NOI-3.1).** The project shall implement the following measures to reduce construction noise impacts to a less than significant level:

- a. Limit construction and grading activity within 500 feet of a residential unit to 7:00 am to 7:00 pm Monday through Friday with no weekend construction. Limit all other construction and grading activity to 7:00 am to 7:00 pm on weekdays, 9:00 am to 5:00 pm on Saturdays, and no construction activity on Sundays or holidays.
- b. Schedule highest noise-generating activity and construction activity along the site boundaries near Kurte Park, Tuscan Hills Residences, Esfahan Drive Residences, Millpond Community, and Carol Residences between 9:00 am and 3:00 pm wherever feasible.
- c. Install temporary construction noise barriers at residential property lines to reduce noise at locations closest to residences.
- d. Equip all internal combustion engine-driven equipment with original factory (or equivalent) intake and exhaust mufflers which are maintained in good condition.
- e. Prohibit and post signs prohibiting unnecessary idling of internal combustion engines.
- f. Locate all stationary noise-generating equipment such as air compressors and portable generators as far as practicable from noise-sensitive land uses.
- g. Locate staging areas and construction material areas as far as practicable from noise-sensitive land uses.
- h. If impact pile-driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield adjacent land uses. Foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the piles. All adjacent land uses shall be notified of any pile-driving schedule in writing.
- i. Utilize "quiet" air compressors and other stationary equipment where feasible and available.
- j. Designate a noise disturbance coordinator who will respond to neighborhood complaints about construction noise by determining the cause of the noise complaints and require implementation of reasonable measures to correct the problem.
- k. Conspicuously post a telephone number for the disturbance coordinator at the construction site.

**39. Construction Related Air Quality (MM Air-1.1).** Consistent with guidance from the BAAQMD, the following additional actions shall be required of construction contracts and specifications for the project:

- a. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes. Clear signage shall be provided for construction workers at all access points;
- b. The project shall develop a plan, which will be implemented and adhered to during construction activities, demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average of at least 70 percent NO<sub>x</sub> reduction compared to unmitigated emissions. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters,

and/or other options as such become available. Specifically, all diesel-powered off-road equipment larger than 50 horsepower and operating on the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent;

- c. All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NO<sub>x</sub>;
  - d. All contractors shall use equipment that meets Air Resource Board's most recent certification standard for off-road heavy duty diesel engines; and
  - e. Minimize the number of hours that equipment will operate, including the use of idling restrictions.
40. **PDO/PIO:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
41. **Public Works Clearance for Building Permit(s) or Map Approval:** As part of Phase 1 as approved by this PDA the applicant shall be required to satisfy all the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. *Construction Agreement:* The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
  - b. *Transportation:*
    - i. A traffic report by Hexagon Transportation Consultants, Inc. dated May 28, 2014 was received and has been reviewed. A final traffic memo dated August 26, 2014, summarizes the report and documents the transportation related improvements conditioned on the project.
    - ii. The project will be subject to the Communications Hill Specific Plan Area Development Policy (CHSPADP) and will be required to construct transportation improvements described in the CHSPADP.
    - iii. To ensure the CHSPADP improvements are completed in a timely manner Table 1 is included in Public Works Master PD (PD14-035/PT14-030) memorandum to Planning dated 01/14/15 which lists the tasks/improvements and divides them by both ADP and Project Phases with corresponding unit ranges. Table 1 has been expanded (attached Table 1A) to include the maximum allowed residential units (triggers) per task/improvement for Project Phase 1. Unit triggers indicate the issuance of Public Works Clearance for building permit of the last residential unit wherein a task can begin unless otherwise specified in the notes following the table.

PHASE I INFRASTRUCTURE DESCRIPTION	UNIT TRIGGER
Communications Hill Blvd to Roundabout Construction	314
Phase 1 Stormwater Mitigation Facility Construction	(a)
Hillsdale Staircase Design (Parks Facility)	(b)*
Hillsdale Staircase Construction Start (Parks Facility)	(b)*
Hillsdale Widening Design	154
Hillsdale Widening Construction Start	314
(ADP) CAPITOL/ NARVAEZ DESIGN	314
Communications Hill Bridge Easement Acquisition	314
Utility Corridor Easement Acquisition	314
Phase 1 On-Site Trail Construction (Parks Facility)	314
Phase 1 Public Park Turnkey Agreement (Parks Facility)	(b)

Note (a) Infrastructure will be completed concurrent with the project phase infrastructure

Note (b) Park improvements will be completed as specified in Parkland Agreement

\*See Condition 36 of this permit

- iv. Detailed descriptions of the triggers for each future phase will be identified in subsequent PD Amendments.
- c. *Street Vacation and Dedication:* A street vacation and dedication along Hillsdale Boulevard and Old Hillsdale Avenue is required. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to the acceptance of the Hillsdale Boulevard staircase or Hillsdale Boulevard public street improvements, whichever comes first. The preliminary title report indicates the applicant owns the street in fee. Therefore, upon vacation no further action by the City is required. Dedication on Hillsdale Boulevard by map or separate instrument should be recorded prior to the issuance of Hillsdale Boulevard widening improvement permit.
- d. *Grading/Geology:*
  - i. A rough/final grading permit is required prior to the issuance of a Public Works Clearance of building permits.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance of building permits. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.

- iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. A Geotechnical and Geologic Report, dated April 21, 2014, addressing the potential hazards of slope instability and erosion was previously submitted to and accepted by the City Engineering Geologist. Furthermore, a Mine Backfill Work Plan, dated April 28, 2014, was submitted and accepted by the City Engineering Geologist and a subsequent Geologic Hazard Clearance was issued in a memo dated May 12, 2014. See the Geologic Hazard Clearance memo for additional information and detailed conditions of the clearance.
- e. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance of building permits.

- f. *Stormwater Peak Flow Control Measures:* The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.

Final inspection and maintenance information for the HM controls must be included on the final HM plans.

- g. *Flood: Zone D:* The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
- h. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, per residential land subdivision are due and payable prior to the recordation of the Tract or Parcel Maps as well as prior to the issuance of Building Permits for non-residential uses.
- i. *Parks:* This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.



- j. *Assessments:* In order to facilitate the build-out of the development consistent with the Communications Hill Specific Plan and to facilitate the long term maintenance of the unique public features contemplated in the specific plan, either the formation of a new community facilities district or annexation into Community Facilities District No. 8 (Communications Hill) is expected.

The existing CFD was created with the expectation of future annexations as development progressed in order to provide maintenance services for the entire Communications Hill planned area, which includes service for median island, backup, and parkstrip landscaping, street trees, pavers, stairways, slopes, trails, pathways, special entrances, retaining walls, swales, and open space areas. Additional zones can be created to facilitate additional service needs not anticipated with the original district. If a new district or annexation cannot be completed, the project would be required to provide an irrevocable alternative mechanism, subject to approval by the Director of Public Works and City Attorney, to provide the long term maintenance repair and/or restoration of the nonstandard amenities originally contemplated in the district.

The original funding limits as set when the existing CFD was formed anticipated the full implementation of the project and set a budget based on the zoning densities established by the specific plan and master zoning. The funding anticipated a special tax of \$667 per unit in 2002 that would generate up to \$1,467,400 based on approximately 2,200 units and estimated quantities of maintenance area. The maximum special tax established for properties already within the existing district for fiscal year 2014-15 is (a) \$848.84 per residential unit, or (b) \$381.72 per acre for non-residential parcels. The special tax is adjusted annually by the change in the Consumers Price Index. The annual special tax commences upon the first occurrence of either a building permit issuance or recordation of a map for residential purposes and is collected through the County property tax bills listed under Tax Code 940 "SAN JOSE-CFD #8". There is an escalator tied to the CPI that was also approved. Unit counts or special tax allocations below these figures reduce the funds available for maintenance.

Any questions may be directed to Thomas Borden at (408) 535-6831.

- k. *Street Improvements:*
- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - ii. Dedication and improvements of the public streets to the satisfaction of the Director of Public Works.
  - iii. Upgrade or retrofit wheel chair ramps at the north side of Adeline Avenue to City standard wheel char ramp.
  - iv. Construct maintenance band within the private street area to delineate the boundary between public and private streets.
  - v. Intersection of Street D & F should be constructed with standard curb returns, no bulb outs.
- l. *Sanitary:* The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.

m. *Electrical:*

- i. Electroliers along the proposed project street frontages will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans per phase.
- ii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
- iii. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.

n. *Street Trees:*

- i. The locations of the street trees will be determined at the street improvement stage per phase. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects".
- ii. Landscaping plan shall follow the guidelines detailed within the Communications Hill Specific Plan.
- iii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

o. *Private Streets:*

- i. Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.

p. Final private street improvement plans is required to the satisfaction of the Director of Public Works.

42. **Cultural Resources**

- a. **MM CUL-1.1:** The project proponent shall have a qualified archaeologist present to monitor subsurface construction excavation activities into native soils in the vicinity of CA-SCL-68, near Narvaez Avenue. The frequency and duration of the monitoring shall be at the discretion of the archaeologist and dependent on his/her subsurface observations during construction operations.
- b. **MM CUL-1.2:** Construction personnel involved in all site clearing and subsequent grading and trenching associated with the proposed project shall be warned that there is a potential for the discovery of archaeological and paleontological materials. Indicators of archaeological site deposits include, but are not limited to, the following: darker than surrounding soils, evidence of fire (ash, fire altered rock and earth, carbon flecks), concentrations of stone, bone and shellfish, artifacts of these materials and burials, either animal or human. Potential fossil types that may be encountered will be discussed.

- c. **MM CUL-1.3:** In the event any unanticipated prehistoric or significant historic era cultural materials are exposed during construction, all grading and/or excavation operations within 50 feet of the find shall be halted, the Director of PBCE shall be notified, and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.
  - d. **MM CUL-1.4:** In the event that human remains are found, all project-related construction shall cease within a 50-foot radius of the find in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
    - i. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
  - e. **MM CUL-1.5:** If cultural resources or remains are discovered during any construction associated with the project, a final report shall be submitted to the satisfaction of the Director of PBCE. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of PBCE.
  - f. **MM CUL-4.1:** If paleontological resources are discovered during construction, all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The City will be responsible for ensuring that the recommendations of the paleontological monitor regarding treatment and reporting are implemented.
43. **Asbestos Dust Mitigation Plan (MM HAZ-1.1):** The project applicant shall prepare an Asbestos Dust Mitigation Plan and submit the plan to BAAQMD for review and approval prior to issuance of a grading permit. The plan must describe dust control measures during grading as well as long term dust control measures. The plan shall include, at a minimum, the following measures:
- a. Track-out prevention and control measures;
  - b. Active stockpiles shall be adequately wetted or covered with tarps;

- c. Control for disturbed surface areas and storage piles that remain inactive for more than seven days;
  - d. Control for traffic on unpaved roads, parking lots, and staging areas;
  - e. Control for earthmoving activities; and,
  - f. Control for off-site transport.
44. **NOA Exceeding BAAQMD Thresholds (MM HAZ-1.2):** Disturbed surfaces with NOA exceeding the BAAQMD threshold concentration of 0.25 percent shall be stabilized using one or more of the following methods:
- a. Establishment of a vegetative cover;
  - b. Placement of at least three inches of non-asbestos-containing material;
  - c. Paving;
  - d. Any other measure deemed sufficient to prevent wind speeds of 10 miles per hour or greater from causing visible dust emission.
45. **Soil Management Plan (MM HAZ-2.1).** A Phase I Hazardous Material Summary for the Communication Hill 2 Project, dated January 28, 2015, was submitted and reviewed by the City. This report summarizes the soil investigation activities that have been completed within the project Phase I area. With the exception of naturally-occurring asbestos that is under BAAQMD review, the soil data collected indicates there is no residual contamination of concern.
46. **Dewatering (MM HAZ-3.1):** To avoid the spread of harmful levels of contamination, the discharge of any water from dewatering activities will be required to comply with NPDES permit requirements, which may involve installation of a treatment system(s) at the dewatering location.
47. **Conformance with Santa Clara Valley Habitat Plan.** Prior to the issuance of a grading permit, or other ground disturbing activity, the project proponent shall submit to the City of San José appropriate Habitat Plan permit application materials or documentation, pay Habitat Plan fees, and agree to Habitat Plan conditions of approval for project conformance with the requirements of the SCV Habitat Plan. Habitat Plan conformance may be achieved on a per phase basis subject to concurrence by the SCV Habitat Agency.
48. **Conformance with UBC (MM GEO-1.2 and 2.2):** The proposed project shall be constructed in accordance with the standard engineering practices in the Uniform Building Code.
49. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or



- c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **18<sup>th</sup> day of March, 2015.**

Harry Freitas, Director  
Planning, Building, and Code Enforcement

Deputy

DRAFT